



6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Transmission Infrastructure Program; Proposed Transmission Infrastructure Program Updates and Request for Comments

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice and request for comments.

SUMMARY: The Western Area Power Administration (“Western”) hereby announces updates to its Transmission Infrastructure Program (“the Program” or TIP). The Program implements Section 402 of the American Recovery and Reinvestment Act of 2009 (“Recovery Act”) regarding loans for the purpose of: (1) constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities with at least one terminus within Western’s service territory, and (2) delivering or facilitating the delivery of power generated by renewable energy resources constructed, or reasonably expected to be constructed, after the date that the Recovery Act was enacted.

Through this Federal Register notice (FRN), Western seeks public comment on proposed updates to the Program. The proposed updates will create a more efficient and transparent process to screen and evaluate potential projects, improve communications with project applicants, promote additional interest from potential applicants that seek Western’s assistance to develop a project and use Western’s Recovery Act borrowing authority, and integrate the DOE Loan Programs Office into the process. The FRN also identifies the principles Western will continue using to ensure (1) that the Program is separate and distinct from Western’s power

marketing functions, and (2) that each eligible TIP project stands on its own for repayment purposes.

DATES: The comment period begins [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ends [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Western will accept written comments at any time during the consultation and comment period but no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send written comments to: Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228-8213, e-mail TXRFI@wapa.gov. Western will post information about Program developments on its website at <http://ww2.wapa.gov/sites/western/recovery/Pages/default.aspx>, including written comments received in response to this FRN after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. John Kral, Transmission Infrastructure Program, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228, telephone (720) 962-7710, e-mail TXRFI@wapa.gov. This FRN is also available on Western's website at <http://ww2.wapa.gov/sites/western/recovery/Pages/default.aspx>.

SUPPLEMENTARY INFORMATION:

Background:

Western markets and transmits wholesale hydroelectric power generated at Federal dams across the western United States. Western's transmission system was developed to deliver Federal hydroelectric power to preference customers. Western owns and operates a transmission system with more than 17,000 circuit-mile, high-voltage lines and also markets power across 15 western states and a 1.3 million square-mile service area. Western's service area encompasses

all of the following states: Arizona, California, Colorado, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah and Wyoming; and parts of Iowa, Kansas, Montana, Minnesota, and Texas.

Western markets excess capacity on its transmission system consistent with the policies and procedures outlined in its Open Access Transmission Tariff (OATT) on file with the Federal Energy Regulatory Commission. Western offers nondiscriminatory access to its transmission system, including requests to interconnect new generating resources to its transmission system, under its OATT.

The Program implements Section 402 of the Recovery Act, which amends Section 301 of the Hoover Power Plant Act of 1984. The Program uses the authority granted under these statutes to borrow up to \$3.25 billion from the U.S. Department of the Treasury to develop new or upgraded electric power transmission lines and related facilities, with at least one terminus within Western's service territory, that delivers or facilitates the delivery of power generated by renewable energy resources.

Western sought public comment on the policies it proposed to use to implement its Recovery Act borrowing authority as announced in a March 4, 2009 Federal Register notice (74 FR 9391). A public comment forum was held in Lakewood, Colorado, on March 23, 2009, and a transcript and meeting video were made available through Western's website. Western received comments from 40 customers and other stakeholders. All comments were reviewed and, where appropriate, incorporated into the Program. Western announced the TIP on May 14, 2009 (74 FR 22732) ("the May 2009 Notice"). In the May 2009 Notice, Western established policies on project funding, project evaluation, project development, operations and maintenance, and project rates and repayment.

Proposed Action:

The proposed action is to implement updates to the Program as set forth in this FRN.

Since 2012, Western has engaged in an internal review of the Program to evaluate its current project development and financing practices and to identify areas where the Program could be improved. As a result of this process Western seeks to achieve: (1) more efficient screening of projects, (2) increased transparency of the process used to review and evaluate projects, (3) improved communications with project applicants, and (4) additional interest from potential applicants that seek Western's assistance to develop a project and use Western's borrowing authority to obtain project funding.

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I. Definitions:

Advanced Funding Agreement (AFA): The document that sets forth the terms by which the Project Applicant provides advance funds to Western for development work on an Eligible Project. An AFA is executed after TIP has reviewed and accepted a Project Applicant's Business Plan Proposal.

Business Plan Proposal: The document prepared by the Project Applicant that articulates project development, commercial, and financial plans supported by Financial Model projections. The Business Plan Proposal is a preliminary plan that identifies the conditions precedent required for a Project Applicant to apply for financing. Submitted after Western and the Project Applicant have entered into a Memorandum of Understanding, a Business Plan Proposal is a detailed, comprehensive document that will mature and be revised by the Project Applicant prior to submission of a loan application.

Project Development Phase: The phase of the project that precedes the Project Finance Phase and construction of the project. The Project Development Phase begins when a Project Applicant submits a Statement of Interest and concludes when a Project Applicant submits an application for the use of Western's borrowing authority. The Project Development Phase may include activities associated with facilities studies, Western Electricity Coordinating Council (WECC) path rating, environmental review, design of facilities, obtaining necessary permits, negotiation and execution of commercial agreements, acquisition of external financing, and any other activity that must be completed prior to the start of construction. The Program offers Project Applicants assistance during this phase.

DOE Loan Programs Office (LPO): A program within the Department of Energy. DOE LPO performs underwriting and loan monitoring and administration functions.

Eligible Project: A project that: (1) delivers or facilitates the delivery of renewable energy resources, (2) has one terminus in Western's service territory, (3) can demonstrate a reasonable expectation of repayment, (4) will not adversely impact system reliability or operations, and (5) is in the public interest.

Financial Model: A model that includes a simulation of relevant costs, benefits, values, and risks that will be assessed when making financial decisions affecting a project. Financial Models submitted to TIP must be in Microsoft Excel and use standard industry conventions or templates provided by Western.

Project Finance Phase: The Project Finance Phase involves the underwriting, financing, and loan monitoring and servicing for an Eligible Project. With few exceptions, it follows completion of the Project Development Phase. The DOE LPO is responsible for administering the Project Finance Phase.

Memorandum of Understanding (MOU): The standard document that sets forth an understanding between Western and a Project Applicant after Western has approved the applicant's Statement of Interest. An MOU precedes the applicant's submission of a Business Plan Proposal.

Project Applicant: Term used to refer to an entity that submits a Statement of Interest and Business Plan Proposal.

Statement of Interest (SOI): The document submitted by a Project Applicant that outlines its proposed project. The first step in the TIP Development Phase, an SOI is limited to 10 pages. An SOI must, at a minimum, include a detailed description of the proposed project (including transmission route information, if applicable, and a preliminary business model), the proposed role that TIP would play in project development, and sufficient information to demonstrate that the project meets or is reasonably expected to meet Western's Project Evaluation Criteria.

II. Principles:

In the May 2009 Notice, Western identified the principles it would use to guide implementation of its borrowing authority. Application of the Program-related principles

ensures, among other things, that the Program is separate and distinct from Western's power marketing functions and that each project stands on its own for loan repayment purposes.

Western hereby reaffirms the Program-related principles set forth in the May 2009 Notice. For convenience, the Program-related principles are set forth below.

Consistent with its borrowing authority, Western will be guided by the following Program related principals:

1. Provide opportunities, where appropriate, for participation by other entities in constructing, financing, owning, facilitating, planning, operating, maintaining or studying construction of new or upgraded electric power transmission lines and related facilities.
2. Use revenue from an individual project developed under the Program as the only source to:
 - a. repay the project loan made by Western;
 - b. pay project-related ancillary services and operation and maintenance expenses; and
 - c. pay for ancillary services provided by an existing Federal power system.
3. Use appropriate accounting controls to treat each transmission line and related facility that receives borrowing authority separately and distinctly from each other and all other Western power and transmission facilities.
4. Ensure project beneficiaries repay project costs.

III. Project Evaluation Criteria:

Consistent with the requirements set forth in the Recovery Act, Western will use the following criteria in evaluating projects:

1. Facilitates the delivery to market of power generated by renewable resources constructed or reasonably expected to be constructed.
2. Has at least one terminus within Western's service territory.

3. Establishes the reasonable expectation that the project will generate enough transmission service revenue to repay the principle investment, all operating costs including overhead, and accrued interest by the end of the project's service life.
4. Will not adversely impact system reliability or operations, or other statutory obligations.
5. Is in the public interest.

IV. Project Life-Cycle Overview:

Based on its experience to date, the Program anticipates that the majority of Eligible Projects will require some project development (e.g., environmental permitting, establishment of WECC path rating, and technical design work) before a loan can be issued using Western's borrowing authority. With this in mind, Western's involvement in each project is divided into two general phases--the Project Development Phase and the Project Finance Phase. Though there may be exceptions (e.g., a project that needs no development work), the expectation is that each project will complete the Project Development Phase and the underwriting and execution stages of the Project Finance Phase before it receives funding under the borrowing authority. Projects that receive funding under the borrowing authority enter a loan monitoring stage until all payments and other amounts due have been repaid.

A. Project Development Phase

The Project Development Phase involves the origination and development work for a potential project. This phase is divided into three parts: (1) project introduction, which involves the initial intake and evaluation of an SOI; (2) project initiation, which involves the development of a more substantial business proposal and initiation of due diligence for each project that advances beyond an SOI; and (3) project development, which involves a review of the proposed baseline project plan and budget as well as the development of major project decision milestones

for each project that advances beyond the business proposal stage. The elements of the Project Development Phase and relevant procedures are explained below.

1. Statement of Interest

The review process begins when a Project Applicant submits an SOI. Western will post instructions on submitting SOIs on its website. On or about the beginning of each quarter (approximately January 1, April 1, July 1, and October 1), Western will screen SOIs received during the previous quarter for purposes of determining whether or not each proposed project meets or is reasonably expected to meet the Project Evaluation Criteria (see Section III above). Western may contact Project Applicants for clarifications during the review period, but will not engage in material discussions about an SOI. Western will make its determination no later than 30 days after the beginning of each quarter.

If Western determines that an SOI does not or is not expected to meet all of the Project Evaluation Criteria, it will inform the Project Applicant in writing of the proposal's deficiencies and take no further action on the proposal. Project Applicants who submit an SOI that does not comport with the Project Evaluation Criteria will be invited to submit a revised SOI as early as the next quarterly review if they so choose. If Western determines that an SOI meets the Project Evaluation Criteria, the proposed project will be deemed an Eligible Project and will be assigned to the development queue, and the Project Applicant will be offered the opportunity to enter into an MOU with Western. Because projects will possess varying degrees of maturity, a project may remain in the development queue until Western—after engaging in discussions with the Project Applicant—determines that the project is sufficiently developed to proceed to the Business Plan Proposal stage.

The Project Applicant is responsible for the costs associated with Western's review of an SOI. Those costs are addressed in Section V below.

2. Memorandum of Understanding

Project Applicants who submit an SOI that meets or is reasonably expected to meet the Project Evaluation Criteria will be offered the opportunity to enter into an MOU with Western. The MOU is a standard document that, among other things, establishes the relationship among the parties, funding obligations for the submission of a Business Plan Proposal, confidentiality provisions, and the making of public statements regarding a project. The execution of an MOU does not imply that Western has approved a project for use of Western's borrowing authority. It does, however, represent Western's intent to move forward with its review and evaluation of the project for purposes of determining whether or not to participate in project development activities. Upon entering into an MOU, either party may terminate the document for any reason.

Western will post a model MOU on its website. A Project Applicant may take up to six months to enter into an MOU with Western after receiving confirmation that its SOI has been approved.

3. Business Plan Proposal

The Business Plan Proposal explains a project's development, commercial, and financial plans supported by Financial Model projections. A Business Plan Proposal is a preliminary plan that may lead to the determination that a project is financially, technically, commercially, and legally viable and thus, appropriate to proceed on to development. A Business Plan Proposal also addresses anticipated conditions precedent that a commercial lender would require in a loan application. It is expected that a Business Plan Proposal submitted for development assistance will mature and be revised by the Project Applicant prior to submission of a loan application.

At a minimum, it is expected that a Business Plan Proposal will include the following information:

- A comprehensive project description that includes the history of the project to date.
- The names of all investors, partners, joint ventures, and other entities with a financial or legal interest in the proposed project.
- The status of all efforts to obtain project funding from other sources.
- Information to assess the financial viability of the proposed project, including audited financial statements and reports of the Project Applicant and any other investors in the project and detailed Financial Models.
- The Project Applicant's recent and relevant experience in developing projects of similar size and scope.
- A plan for how the Project Applicant expects to generate revenue from the project to:
(1) repay principal and interest associated with a loan from Western's borrowing authority, and
(2) pay for project-related ancillary services and operations and maintenance expenses.
- A detailed analysis of any impact that the proposed project may have on the reliability of the integrated electrical grid.
- An explanation of how the project will obtain and deliver generation-related ancillary services (if appropriate).
- An independent analysis of any new technologies to be employed as part of the project.
- All known material economic, legal, and other risks that may have an effect on the project.
- A listing of all TIP development-related services that the Project Applicant seeks to obtain.
- Relevant information concerning required approvals, permits, licenses, land rights, and other permissions that must be obtained on behalf of the project.

- Detailed project technical specifications and designs.
- Required interconnections and path ratings.

Western will perform a due diligence review of a Business Plan Proposal to determine if the proposal is deficient in these or any other material respects. It will notify the Project Applicant in writing and work with the applicant to remedy any deficiencies. When Western determines that the Business Plan Proposal adequately addresses all technical, commercial, and financial aspects of a proposed project and contains the requisite Financial Models, it will invite the Project Applicant to enter into an AFA.

A Project Applicant may take up to 12 months to submit a Business Plan Proposal after signing an MOU with Western. Due to the varying nature and complexity of Business Plan Proposals, Western will not establish a firm fixed time frame for reviewing such documents but will endeavor to complete its review expeditiously while keeping the Project Applicant apprised of its progress.

The Project Applicant is responsible for the costs associated with Western's review of a Business Plan Proposal. Those costs are addressed in Section V below.

4. Advance Funding Agreement

An AFA is an agreement that sets forth the terms under which Western will participate in the development of a project. The terms of an AFA call upon a Project Applicant to advance a mutually-agreed amount to cover costs Western incurs in performing project development activities as set forth in the document. No work will commence without receipt of advance payment. The AFA also provides that if there are insufficient funds to cover Western's project-related development expenses, Western will inform the Project Applicant of the insufficiency and request additional funding.

TIP will post a model AFA on its website.

5. Project Development

Once an AFA is executed, the parties begin to perform project development-related activities. These activities often include facilities studies and designs; establishment of a WECC path rating; environmental, cultural, endangered species, and other assessments; negotiation and execution of commercial agreements; acquisition of external financing for construction; negotiation of the project ownership structure; any needed interconnection agreements; and Western's continued performance of due diligence as it relates to the project and any other activity that must be completed prior to the start of construction. Depending on the nature of the project and the amount of development that has already occurred, the Project Development Phase is likely to vary in length from less than a year to several years.

B. Transition from Project Development Phase to Project Finance Phase

Western, in consultation with LPO, will determine when a project has completed the Project Development Phase and will coordinate with LPO regarding the transition of a project from the Project Development Phase to the Project Finance Phase.

C. Project Finance Phase

The Project Finance Phase involves the underwriting, financing, and loan monitoring and servicing for a project. This phase can generally be divided into three parts: (1) project underwriting, which involves submission by an applicant of a completed loan application and business plan, the completion of extensive due diligence and financial modeling by LPO and its advisors, and negotiation of a term sheet and conditional commitment containing the material business and legal terms of a possible financing transaction; (2) for any project that proceeds beyond underwriting, project execution, which involves the negotiation and documentation of

definitive loan documents and any other agreements and instruments required for the financing of the project, as well as the closing of such financing; and (3) for any project that achieves execution, project implementation, which involves the actual implementation and funding disbursements in accordance with the loan documents as well as loan servicing and monitoring activities.

V. Funding During the Project Development Phase:

A. Policies and Procedures:

1. Accounting Principles

Western will use generally accepted accounting principles and practices in recording and tracking all expenses and revenue transactions for each project.

2. Program Funding

The Program must be financially self-sustaining. As such, expenses incurred by Western in reviewing SOIs and evaluating Business Plan Proposals must be borne by Project Applicants. Similarly, Project Applicants must provide adequate advance funding for services performed by Program personnel or contractors during the Project Development Phase.

3. Allocation of Expenses – SOI

a. Based on Western's experience, it estimates that it will cost approximately \$50,000 to review and screen an SOI. Therefore, Project Applicants shall make a one-time \$50,000 payment to the Program at the time an SOI is submitted to cover costs related to the SOI review. Project Applicants should contact the TIP office to make arrangements for this payment. Failure to make this payment will result in Western taking no action to review and screen the SOI.

b. If, in the course of reviewing the SOI, Western determines that there are insufficient funds to cover its anticipated expenses, Western will promptly inform the Project Applicant of the

insufficiency and request adequate additional funding to complete its review. If an SOI does not meet or is reasonably expected to not meet all of the Project Evaluation Criteria, leading Western to conclude that no further action on the project proposal is required, any funds paid by the Project Applicant in excess of actual costs incurred by Western in reviewing the proposal will be returned to the Project Applicant.

4. Allocation of Expenses – Business Plan Proposal

a. Based on its experience, Western estimates that it will cost approximately \$250,000 to review and evaluate a Business Plan Proposal. Therefore, Project Applicants shall make a one-time \$250,000 payment to Western at the time a Business Plan Proposal is submitted to cover costs related to the Business Plan Proposal review and evaluation. Failure to include this payment with the submission of a Business Plan Proposal will result in Western taking no action to review and evaluate the proposal. Project Applicants should contact the TIP office to make arrangements for making this advance. The Project Applicant may elect to apply funds remaining (if any) from its \$50,000 SOI submission payment that are in Western's control to the \$250,000 Business Plan Proposal charge.

b. If, in the course of reviewing and evaluating the Business Plan Proposal, Western determines that there are insufficient funds to cover Western's anticipated project-related expenses, Western will inform the Project Applicant of the insufficiency and request adequate additional funding to complete its review. If a Business Plan Proposal does not lead to the determination that a project is financially, technically, and commercially viable and ready to proceed to development, Western will notify the Project Applicant and any funds paid by the Project Applicant in excess of actual costs incurred by Western in evaluating the proposal will be returned to the Project Applicant.

5. Allocation of Expenses – AFA

As part of the AFA, Western and the Project Applicant will mutually agree on an amount to cover costs associated with project development activities performed by Western. The Project Applicant may elect to apply funds remaining (if any) from its \$250,000 Business Plan Proposal payment that are in Western's control to the mutually agreed upon amount.

VI. Reaffirmation of Project Development and Operations & Maintenance, and Project Rates and Repayment Policies and Practices:

Western reaffirms the Project Development and Operations & Maintenance, and Project Rates and Repayment Policies and Practices set forth in the May 2009 Notice.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500-1508), and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined that this action fits within category A13, Procedural Documents, of Appendix A to Subpart D of Part 1021 and is categorically excluded from NEPA analysis. Future actions under this authority will undergo appropriate NEPA analysis.

Dated: September 6, 2013

Mark A. Gabriel
Administrator

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